IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.49 OF 2005

Mrs.Renuka R.Pagare. ..Applicant.

V/s.

Mr.Ratandeep M. Pagare. ..Respondent.

Mr. Sandesh D. Patil for applicant.

Mr.Dinesh P. Adsule for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 22, 2006.

P.C. :

1. Heard counsel for the parties. This petition is filed praying for transfer of proceedings instituted by respondent husband in the Court of Civil Judge, Sr.Division, Malegaon being HMP No.76 of 2003 to the Court of Civil Judge, Sr. Division, Thane, where the petitioner has already instituted Marriage Petition No. 337 of 2003 which is under section 24 of the Hindu Marriage Act. According to the petitioner, she is unemployed and not in a position to undertake journey to attend proceedings at Malegaon. Counsel for the respondent submits that the relief claimed in this petition can be sought by the petitioner by taking recourse to remedy under section 21A of the Hindu Marriage Act, 1955. Section

21A of the Act which has come into effect from 27th May, 1976 reads thus:

> "21-A. Power to transfer petitions in certain cases.-(1) Where-
>
> (a) a petition under this Act has been presented to a district Court having jurisdiction by a partly to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and
>
> (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree divorce under section 13 on any ground, whether in the same district Court or in a different district Court, in the same State or in a different State,
>
> the petitions shall be dealt with as specified in sub-section (2).
>
> (2) In a case where sub-section (1) applies,-
>
> (a) if the petitions are presented to the same district Court, both the petitions shall be tried and heard together by that district Court;
>
> (b) if the petitions are presented to different district Courts, the petition presented later shall be transferred to the district Court in which the earlier petition was presented was presented and both the petitions shall be heard and disposed of together by the district Court in which the earlier petition was presented.
>
> (3) In a case where clause(b) of sub-section (2) applies, the Court or the

> Government, as the case may be, competent under the Code of Civil Procedure, 1908, to transfer any suit or proceeding from the district Court in which the later petition has been presented to the district Court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code."

In my opinion, this provision does not take away the power of this court to transfer the proceedings which power is referable to provisions of Code of Civil Procedure. As a matter of fact from the purport of section 21A it is more than clear that granting order of transfer should be matter of course. Besides, in the present case, the petition has been filed by the petitioner under section 24 of the Hindu Marriage Act in earlier point of time. Accordingly, this petition succeeds in terms of prayer clause 9(a).

2. Civil Judge Sr.Division, Thane is directed to hear both the petitions together as the issues involved are overlapping.